United States Department of Labor Employees' Compensation Appeals Board

M.D., Appellant))	
and	Docket No	
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL,)	ay 3, 2022
San Francisco, CA, Employer))	
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted or	the Record

ORDER GRANTING MOTION TO REVERSE

Before:
ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge JANICE B. ASKIN, Judge

On August 26, 2021 appellant filed a timely appeal from an August 12, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). By that decision, a representative of OWCP's Branch of Hearings and Review affirmed an April 28, 2021 decision, which denied her claim that she sustained an injury in the performance of duty.¹

The Director of OWCP filed a motion dated October 27, 2021, requesting that the Board reverse OWCP's August 12, 2021 decision and remand the case. The Director acknowledged that although appellant was injured off her employer's premises, her injury occurred while obtaining a COVID-19 vaccine that was of significant benefit to her agency, with the agency's encouragement, and at a time and place determined by the agency. The Director noted that given the significant benefit to the agency from appellant's receipt of the COVID-19 vaccine, coupled with the fact that the employing agency was actively involved in arranging the COVID-19 vaccine and determining

¹ The Board notes that, following the August 12, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

the location where it would occur, appellant sustained an injury in the performance of her federal duties. The Director requested that the Board reverse the August 12, 2021 decision and remand the case. The Director indicated that, on remand, OWCP would accept that appellant's injury was sustained in the performance of duty; further develop the claim to determine the nature and extent of appellant's employment-related medical condition and any related disability; and authorize the payment of appropriate claimed benefits.

The Board has duly considered the matter and concludes that the Director's motion should be granted. Accordingly,

IT IS HEREBY ORDERED THAT the motion to reverse filed by the Director of the Office of Workers' Compensation Programs is granted. The decision of OWCP dated August 12, 2021 is reversed and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 3, 2022 Washington, DC

> Alec J. Koromilas, Chief Judge Employees' Compensation Appeals Board

> Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

> Janice B. Askin, Judge Employees' Compensation Appeals Board